

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,       ) Docket No. 3:06-CR-719  
  
                    Plaintiffs,       ) Toledo, Ohio  
  
                    v.                   ) April 8, 2008  
  
MOHAMMED AMAWI, ET AL.,       )  
  
                    Defendants.       )

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TRANSCRIPT OF JURY TRIAL, VOLUME 23  
BEFORE THE HONORABLE JAMES G. CARR  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:   Gregg N. Sofer  
                          David I. Miller  
                          Jerome J. Teresinski  
                          U.S. Department of Justice  
                          10th & Constitution Avenue, NW  
                          Washington, DC 20530  
                          (202) 353-3464  
  
                          Thomas E. Getz  
                          Justin E. Herdman  
                          Office of the U.S. Attorney  
                          801 Superior Avenue, W  
                          Cleveland, Ohio 44113  
                          (216) 622-3840  
  
For the Defendant   Timothy Ivey  
Amawi:               Edward Bryan  
                          Amy Cleary  
                          Jonathan Whitmer-Rich  
                          Office of the Federal Public Defender  
                          750 Skylight Office Tower  
                          1660 West Second Street  
                          Cleveland, Ohio 44113  
  (216) 522-4856

1 Elias Muawad  
2 Muawad & Muawad  
3 Suite 209  
36700 Woodward Avenue  
4 Bloomfield Hills, Michigan 48304  
(248) 594-4700

5 For the Defendant  
6 El-Hindi:

Charles M. Boss  
Boss & Vitou  
111 West Dudley Street  
Maumee, Ohio 43537  
(419) 893-5555

7  
8 Stephen D. Hartman  
Kerger & Kerger  
Suite 201  
9 33 South Michigan Street  
Toledo, Ohio 43602  
10 (419) 255-5990

11 Alek H. El-Kamhawy  
12 Raslan, El-Kamhway & Pla  
Suite 3FE  
1700 East 13 Street  
13 Cleveland, Ohio 44114  
(216) 928-1500

14 For the Defendant  
15 Mazloun:

David L. Doughten  
4403 St. Clair Avenue  
Cleveland, Ohio 44103-1125  
16 (216) 361-1112

17 Jeffrey J. Helmick  
Helmick & Hoolahan  
18 2nd floor  
1119 Adams Street  
19 Toledo, Ohio 43624-1508  
(419) 243-3800

20  
21 Mohammed Abdrabboh  
1620 Ford Avenue  
22 Wyandotte, Michigan 48192  
(734) 283-7000

23  
24 Court Reporter:

Angela D. Nixon, RPR, CRR  
1716 Spielbusch Avenue  
25 Toledo, Ohio 43624

(419) 260-5259

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1           THE COURT:  There is something you want to talk  
2 to me about?

3           MR. SOFER:  Judge, there are a number of issues  
4 which I thought we probably should discuss this morning  
5 before beginning, and I just wanted to bring to The Court's  
6 attention first from the government's perspective relates  
7 to the subpoenas of Darren Griffin's bank account which we  
8 understand --

9           THE COURT:  Do we have to talk about that now?  
10 Can't we wait?

11          MR. SOFER:  We can wait on that.  There are two  
12 issues then that I think we need to discuss before we get  
13 started.  The first one is I don't know when we'll get to  
14 this this morning or -- but I think we probably will get  
15 with it this morning.  There's one video the government  
16 intends to play where there is a transcript which we'd like  
17 to hand out to the jurors.  It's a translation in English.  
18 It's what's been referred to as the bomb vest video.  It's  
19 the -- as I understand it, it's the only transcript which  
20 counsel for El-Hindi did not object to in their motion  
21 related to translation, and we think, given the length of  
22 the video and the substance of the video, it's also that  
23 particular video he --

24          THE COURT:  I'll hear from them.  Any objection  
25 to that?

1 MR. BOSS: Judge, the motion that I filed  
2 pertaining to the translations objected to 54 of the 55  
3 translations on the basis that the translations were given  
4 to us in a dilatory fashion, too late for us to have an  
5 opportunity to translate it.

6 THE COURT: In a way, I disagree. I thought  
7 about this. All three of these defendants are fluent  
8 Arabic speakers. You have potential translators sitting at  
9 your side. This isn't a case in which you have people who  
10 don't know the language, and let's say they were, you know,  
11 non Arabic speakers, but they had collected these videos  
12 and maybe had somebody tell them -- translate them and tell  
13 them what they were about, or I had included, for example,  
14 Mr. Kohlmann could testify about them. I mean, that's  
15 different. But you know, you have people right there next  
16 to you who say, no, that's not what that means. The fact  
17 that it came in this morning, I assume you can sit down  
18 whenever.

19 MR. SOFER: Which it did not, Your Honor.

20 THE COURT: I understand. So I know we fussed  
21 about that whole issue of translation for a long time but  
22 this light bulb just went off in my head a couple weeks  
23 ago.

24 MR. BOSS: This is the one I didn't object to  
25 because it wasn't produced to us late, so to that extent --

1 THE COURT: So let's move on. I'd rather talk  
2 about things we have to deal with today.

3 MR. BOSS: We didn't bring it up. I would note,  
4 however, that the defendants' ability to speak Arabic  
5 doesn't necessarily help us if they don't testify.

6 THE COURT: It can help you in telling you  
7 whether the government's translation is accurate or not.  
8 That's all my point is. They can -- they were the speakers  
9 whose words are being misinterpreted, mistranslated,  
10 according to you. They can say no. This word means this  
11 in that context. And you can prepare that transcript.

12 MR. BOSS: Thank you.

13 THE COURT: And you can cross examine on that  
14 basis. You're right about the preparation of the  
15 transcript, that's another issue. What I may have to do  
16 then is have a hearing outside the hearing of the jury to  
17 confirm the integrity of the transcript. That may cause  
18 problems with cross examination for the government but  
19 that's when the case is with you, and that's several weeks  
20 away.

21 MR. SOFER: The rest of my issues, Judge, we can  
22 do later. I just ask Your Honor to keep a little bit of  
23 time for us today to discuss these issues.

24 THE COURT: I will at 4:30.

25 MR. SOFER: Very well. We're ready to proceed.

1 THE COURT: Okay. I'm told I have something at  
2 4:30 so we'll do it at 5:00.

3 Good morning. And we're ready to resume.  
4 Mr. Sofer, if you'll call Mr. Griffin to the stand.

5 MR. SOFER: Yes, Your Honor.

6 THE COURT: Of course you remain under oath.

7 THE WITNESS: Yes, sir.

8 BY MR. SOFER:

9 Q. Good morning, Mr. Griffin.

10 A. Good morning.

11 Q. I want to go back to October 14th, 2004 before we  
12 keep going today. I direct your attention to what you  
13 testified previously was a meeting at Mohammed Amawi's  
14 apartment. And we're going to start by playing clip 10A-2.

15 THE COURT: Ladies and gentlemen, why don't you  
16 go back upstairs, at least you can relax up there instead  
17 of sitting and watching us looking at blank screens.

18 Mr. Griffin, you may step down.

19 (Jury exited the courtroom.)

20 THE COURT: I want the government to prepare  
21 transcripts the old fashioned way so that we don't have  
22 this problem. I know it's going to cost a lot more and be  
23 inconvenient, but who knows how much more time we're going  
24 to lose because of this system not functioning and people  
25 not getting it right. And I assume the only reasonable way

1 for the video is to have the transcription viewed by the  
2 jury.

3 MR. SOFER: One of the only reasons. The other  
4 reason is that, as The Court can see, we've interwoven the  
5 video evidence --

6 THE COURT: I understand that. But at least for  
7 the transcripts --

8 MR. SOFER: We can do that. We'll have to make  
9 lots of copies or.

10 THE COURT: Let's see what we can do in terms  
11 of -- the government's going to start paying for it. We're  
12 going to have a back-up screen in the building. It's going  
13 to be here. I don't care what it costs, we're not going to  
14 put up with this anymore. So go ahead and order the  
15 screen.

16 MR. HERDMAN: Your Honor, I did have special  
17 agents last week and I did go ahead and reach them out to  
18 Perrysburg to the aud -- I'm sorry, Your Honor, Dave  
19 Spinionich (phonetic) had called the audio visual people in  
20 Perrysburg, and I have a quote from him on my computer. I  
21 can pull that up.

22 THE COURT: Let's just call them if they have a  
23 screen that's compatible that can play this to the jury and  
24 another one that can display it to defendants, go ahead and  
25 get it and have it in here. It's going to be set to go.



1 If it costs \$100,000, I don't really care, okay.

2 MR. HERDMAN: Is there someone on The Court staff  
3 that he should coordinate with to give that information to?

4 THE COURT: Get me John Bianco on the phone or  
5 just give me his number and I'll go back and call him right  
6 now.

7 I just spoke with our IT director, he claims  
8 there's a back-up available that will do as well as the  
9 screens will do. I don't know what it is. I told him by  
10 10:00 I want confirmation that's the case. In the  
11 meantime, find out from the agent, make the contact, make  
12 the call, set it up and at least have whoever it is ready,  
13 I want to know when they can be here and what it's going to  
14 cost. I want two screens the way we had during opening  
15 statements. It's hardly ideal, but if that's the best we  
16 can do, that's the best we can do.

17 MR. HERDMAN: And Your Honor, my understanding is  
18 that right now counsel's monitors are all working, it's  
19 just the jury box that's having difficulty. I've given --  
20 we've relayed Mr. Bianco's contact information to Dave  
21 Spinionich, and he's going to be in contact with Mr. Bianco  
22 directly.

23 THE COURT: Okay. All right. Let's turn to  
24 the -- you can be seated. Let's turn to the other issues  
25 that we have.

1           MR. SOFER: Judge, we have, again, just a number  
2 of housekeeping matters, I think at this juncture. One is  
3 the, as I said the subpoenas of the -- of Darren Griffin's  
4 checking accounts. And our concern is simply one of safety  
5 for Mr. Griffin. If to the extent that they were properly  
6 subpoenaed -- and I'm not entirely clear in my own mind  
7 whether or not that's an appropriate thing to do in this  
8 case given the disclosures that have already been made.  
9 The governments concerned about simply his safety.  
10 Obviously from looking at somebody's checking account, you  
11 can tell all kinds of things about them, their family.

12           THE COURT: Why don't we do this. Again,  
13 assuming that the subpoenas are properly issued, let's make  
14 them returnable to counsel only for now and then you see  
15 what they are and you can talk with each other. If they  
16 are -- if there is -- if there are documents ultimately  
17 that you desire to display, you can do some redaction, I  
18 would assume, addresses and so forth, Social Security  
19 numbers and that kind of thing. I mean, is that headed in  
20 the direction that you're concerned?

21           MR. SOFER: It is. And again, if we were to look  
22 at The Court's -- I probably better pick myself instead.  
23 If we were to look at my checking account, as dismal as it  
24 may be, you'd be able to see essentially close to where I  
25 live, you'd see where I go, you'd see my family members.

1 THE COURT: I understand.

2 MR. SOFER: That's really --

3 THE COURT: If you were to see mine, you would  
4 see the words overdraft protection.

5 MR. SOFER: So this, of course -- this is what  
6 the government's concern is.

7 THE COURT: I understand. Let's find what they  
8 are, assuming -- and go from there, okay.

9 MR. HARTMAN: I did get some returned already  
10 that frankly I treated under the protective order about his  
11 identity information. I'll share with the government  
12 whatever we need to do to protect this file.

13 THE COURT: I think I can envision you're  
14 interested in what comes in and to some extent some of the  
15 expenditures, but I think that's a fair thing to call to my  
16 attention.

17 MR. SOFER: The second issue is more significant  
18 in some ways relates to the stipulation which we've now  
19 sent out, I think in excess of 70 proposed stipulations to  
20 counsel. Of those 70 stipulations, they've come in  
21 essentially to me in variety. One is for evidentiary  
22 issues, business records and the like. Mr. Herdman can  
23 break down for you, Your Honor, the specifics of what  
24 counsel has agreed to stipulate to. I think in that area  
25 they've stipulated to quite a few records but not all of

1     them which we'll -- of course ones that they did not  
2     stipulate to.

3             THE COURT:   Well, let's be specific.   What has  
4     not been stipulated to in terms of documentary or other  
5     evidence?

6             MR. SOFER:   One moment, Judge.

7             THE COURT:   That's fine.

8             MR. SOFER:   I'll let Mr. Herdman do this, he's  
9     far ahead of me.

10            THE COURT:   Take the middle man out of it.   Let's  
11    go directly to the source.

12            MR. HERDMAN:   Generally most of the evidence  
13    stipulation, my understanding is all of the records that  
14    have been proposed, counsel is -- will stipulate to their  
15    authenticity.   If I'm incorrect by that --

16            MR. HARTMAN:   I don't think so.

17            MR. HERDMAN:   In terms of the business records, I  
18    don't think we had any disagreement.   The business records  
19    we're in agreement on?   You'll --

20            MR. BOSS:   I sent you the exhibit list.

21            MR. HERDMAN:   There were a couple of just --  
22    there was an Exhibit 121 which is a letter from Zaim on AZ  
23    Travel letter head.   There will be no stipulation as to the  
24    chain of custody on that particular item.

25            THE COURT:   A letter?

1 MR. HERDMAN: It's a letter dated August.

2 THE COURT: Is he going to be a witness probably?

3 MR. HERDMAN: There will be a witness.

4 THE COURT: Is he going to be a witness being the  
5 author of the letter?

6 MR. HERDMAN: Not at this time.

7 THE COURT: Not on the government's part anyway?

8 MR. HERDMAN: No, Your Honor.

9 THE COURT: And what's the issue with -- if I may  
10 ask, what's the problem with anyone -- you're seeking  
11 stipulation that it's simply authentic. It is a letter  
12 that was sent by him and those are the contents on the  
13 date?

14 MR. HERDMAN: It was never mailed, Your Honor.  
15 It was a letter that was provided to Mr. Griffin and  
16 Mr. Amawi.

17 THE COURT: Okay. But communication --

18 MR. HERDMAN: Correct.

19 THE COURT: What's the problem?

20 MR. BOSS: Mr. El-Hindi was not involved in the  
21 transaction. We have no awareness of it.

22 MR. HARTMAN: That one wasn't our objection, I  
23 don't think.

24 THE COURT: I mean, does anybody have any  
25 bonafide contention that this is a fake? I'm sorry, folks,

1 that's my bottom line. If you can say to me, Judge, you  
2 know, I don't have the common law mindset that everything  
3 has to be proven to be authentic beyond a reasonable doubt.  
4 If you have some reason to think it's a fake or it was  
5 never written or whatever, then fine. We'll hold a little  
6 voir dire on that.

7 MR. HARTMAN: Judge, I will tell you I don't have  
8 any confirmation on who actually prepared the letter, if it  
9 was Mr. Zaim or not.

10 THE COURT: We can voir dire him, folks.  
11 Subpoena him in and I'll voir dire him if there's a real  
12 question as to that.

13 MR. HERDMAN: Your Honor, I think we might be  
14 able to work out this particular exhibit perhaps if not --

15 THE COURT: So everyone understands, if someone  
16 says look, Judge, it's our understanding that this letter  
17 was never created or communicated, that's one thing. But  
18 if somebody can't say, Judge, we have reason to --

19 MR. HERDMAN: I --

20 THE COURT: I'm not going to be looking at my  
21 record.

22 MR. HERDMAN: The way the stipulation's --

23 THE COURT: Or -- go ahead.

24 MR. HERDMAN: The way that the stipulation has  
25 been proposed to counsel is that they've reserved the right

1 to object to the admissibility on relevance grounds or any  
2 other grounds. This strictly goes to authenticity or  
3 custody.

4 THE COURT: Yeah, it's foundation.

5 MR. HERDMAN: And we do -- in relation to this  
6 particular Exhibit, Your Honor, I believe as the case goes  
7 forward, you're going to hear actual consensual recordings  
8 that relate directly to the creation of this letter. So if  
9 counsel wants to wait to readdress this at that time, we'd  
10 be happy to do so. There are photographs, Exhibit 134,  
11 photographs of Mohammed Amawi labeled 134A through 134G.  
12 Those, I believe, are photographs of Mr. Amawi on the plane  
13 that were the subject of -- they were introduced during the  
14 suppression hearing. And there have been -- we proposed a  
15 stipulation as to the authenticity of these photographs.  
16 There's been no agreement as to those particular exhibits.

17 MR. WHITMER-RICH: I suppose that may have been a  
18 slight misunderstanding. We would stipulate as to  
19 authenticity of those photographs. Misunderstanding, Your  
20 Honor.

21 THE COURT: No problem.

22 MR. HERDMAN: And Exhibits 141 through 147, all  
23 of those relate to property recovered from Mr. Amawi's  
24 home, camouflage pants, military web belt and the knives  
25 and swords, and we would just propose a stipulation as to

1 the authenticity of --

2 THE COURT: Yeah, these are items that were  
3 discovered on whatever day and where they were discovered.

4 MR. HERDMAN: Correct. Well, that's --

5 THE COURT: I assume this is through a search  
6 warrant?

7 MR. HERDMAN: Yes, Your Honor.

8 THE COURT: As to which there was --

9 MR. HERDMAN: There's also an evidence recovery  
10 log, which is Exhibit 149. There's been no stipulation.  
11 We would propose a stipulation to Exhibit 148, which is the  
12 photographs and search warrant documents relating to -- we  
13 would propose a stipulation as to Exhibit 148, which is the  
14 photographs and sketch of 7 Shaftesbury, and 149 which is  
15 the evidence recovery log from 7 Shaftesbury.

16 THE COURT: Again, that's the part -- was all of  
17 that related to the search, were the pictures -- pictures  
18 taken during the search?

19 MR. HERDMAN: Yes, and defense counsel had  
20 proposed redactions to certain photographs so that there --  
21 the search was executed, there were actual knives hanging  
22 on the wall for 7 Shaftesbury and defense counsel has  
23 objected to -- they won't stipulate to any photographs  
24 containing those knives.

25 THE COURT: Again, we're talking about



1 authenticity, we're not talking when the photographs were  
2 taken, those objects were in the location that they're  
3 depicted being in.

4 MR. WHITMER-RICH: We will stipulate to  
5 authenticity to that, yes.

6 THE COURT: If -- any objection to the  
7 admissibility to any testimony, pictures or whatever?

8 MR. HERDMAN: Just to clarify, Your Honor, that  
9 goes to the physical exhibits as well as the knives and  
10 swords.

11 MR. WHITMER-RICH: Yes.

12 THE COURT: That's the question, okay.

13 MR. BOSS: As does defendant El-Hindi on this  
14 series.

15 MR. HERDMAN: And I think the last exhibits, 194,  
16 195 and 196, those relate to Bureau of Prisons phone  
17 records relating to all three defendants.

18 THE COURT: Are those recordings or are they  
19 simply like pen register, numbers dialed?

20 MR. HERDMAN: Pen registers, Your Honor.

21 THE COURT: Okay. Again, it's authenticity only,  
22 right?

23 MR. HERDMAN: Correct.

24 MR. HARTMAN: Judge, we're going to have to talk  
25 about that one. We'll get back to you on that. We may

1 have a problem, we may not.

2 THE COURT: To authenticity.

3 MR. BOSS: Judge, we don't unfortunately know the  
4 process by which the calls were actually recorded and  
5 attributed to a particular defendant. I -- it's not that  
6 we're trying to quibble about it.

7 THE COURT: I understand.

8 MR. BOSS: We just aren't aware.

9 THE COURT: It is -- it is the connection between  
10 the number called and the particular caller.

11 MR. HARTMAN: Correct.

12 THE COURT: I understand. That's El-Hindi,  
13 information is but a phone call away.

14 MR. HERDMAN: So just to sum up, Your Honor, I  
15 guess the only outstanding items are Exhibits 121 and  
16 Exhibits 194, 195 and 196. I think we've reached an  
17 agreement on everything else.

18 THE COURT: Which were those? Are those the  
19 phone --

20 MR. HERDMAN: 194, 195 and 196.

21 THE COURT: Are the phone records.

22 MR. HERDMAN: And the letter.

23 THE COURT: Anything else that we need to talk  
24 about?

25 MR. HERDMAN: Your Honor, relating to proposed

1 stipulations, government has proposed a list of  
2 stipulations related to names, terms, places. Defense  
3 counsel got back to us with some suggested edits. The  
4 original list from the government included 77 terms, names,  
5 places. And of those 77, we have no disagreement as to 22  
6 of those 77. Most of the ones that we don't -- we don't  
7 disagree or that we're in agreement on relate to geographic  
8 locations, cities in Iraq.

9 THE COURT: That you don't disagree on -- that  
10 you agree.

11 MR. HERDMAN: That we agree on. And there are a  
12 few Islam specific terms that we do agree on. The others I  
13 think we're going to have to try to work some of these  
14 things out.

15 THE COURT: Well, why don't we talk about that  
16 now. We've got the time.

17 MR. SOFER: Judge --

18 THE COURT: If you'd rather not, that's fine.

19 MR. SOFER: If I may, we can go through these and  
20 I think we certainly should, but I think this highlights  
21 the -- one of the continuing issues that the government's  
22 been bringing to The Court's attention, which is many of  
23 these terms are sort of in the crux of the government's  
24 case, Jihad being one of them. And we -- if you look at  
25 what we've said versus what the defense proposed, you'll

1 see, and it will be clear to you, I understand why it is we  
2 disagree on this and why a stipulation would be very  
3 difficult to arrive at here. My view is --

4 THE COURT: Let me interrupt. The geographic  
5 locations, that's easy. I can take judicial notice.

6 MR. SOFER: You could, Your Honor.

7 THE COURT: Even without a GPS, I can take  
8 judicial notice.

9 MR. SOFER: I would have been shocked if someone  
10 was not willing to stipulate to --

11 THE COURT: In fact, that is in Iraq, I  
12 understand.

13 MR. SOFER: It's not controversial.

14 THE COURT: With regard to terms, in other words,  
15 translations.

16 MR. SOFER: I'm sorry to interrupt, Your Honor.  
17 It's not translations, per se, some of it is.

18 THE COURT: Meaning?

19 MR. SOFER: Indeed.

20 THE COURT: With regard to that, let me just  
21 propose if you're not able to agree -- to the extent that  
22 you aren't, that either you call a witness to testify that  
23 in the presence of the jury that can read Arabic and have  
24 him say, ladies and gentlemen, for your understanding, the  
25 government's position is these terms mean this. And I'll

1 let the defendant, when its time comes, do the same thing.  
2 I think -- make clear that there is dispute and  
3 disagreement about that and when the case is with the  
4 defense, if they desire to do so, they may present evidence  
5 that expresses their understanding of what these terms  
6 mean. I assume that the third category then is people or a  
7 category or tell me what the other just general --  
8 generically what the categories are, other categories. But  
9 anyway would that --

10 MR. SOFER: It would to the extent that you said  
11 qualified to speak Arabic, some of these things really  
12 don't require that, per se, but, yes, I think that's --

13 THE COURT: I'm trying to be with the Arabic, the  
14 interpretation of where that Jihad or Fatwa or whatever  
15 we're talking, okay.

16 MR. SOFER: I guess I would say you have to.

17 THE COURT: Let me jump ahead of what I think  
18 you're -- I don't think I have a problem with having  
19 Mr. Kohlmann come in and testify who Al-Zawahiri is or was,  
20 who various people are and with probably some sort of  
21 limiting instruction as to his testimony presented for  
22 general background information so that, the government's  
23 perspective this is their view who these people are. I  
24 mean, he's qualified to do that. I think the point you  
25 keep making is that, Judge, we have to have somebody tell

1    them, and he clearly is, in my view, capable to do so.  It  
2    would be pretty straight forward, not elaborate, this is an  
3    area of academic or quasi academic inquiry on your part,  
4    happens a half dozen years or decade or whatever.  And you  
5    will want to very carefully contain in terms of showing the  
6    kind of work that he does.  I wouldn't want to go into all  
7    of his consultantships and testimony and all that simply  
8    saying he knows what he's talking about in that regard that  
9    he's essentially, quote, a student of various movements of  
10   this sort with particular reference to places like  
11   Afghanistan and Middle East or whatever is relevant in  
12   terms of the people.  And so and so Zawahiri was born  
13   wherever he was born.  He was engaged in the kind of  
14   activities in Al-Queda and Iraq, whatever it was.  Current  
15   understanding from whatever until he was killed by American  
16   forces --

17           MR. SOFER:  If you look at our stipulation, I  
18   think that's almost verbatim what we were trying to get.

19           THE COURT:  I didn't get ex parte, folks, okay,  
20   to the extent you may duplicate what they're saying.  But  
21   again, and I think Mr. Kohlmann is an appropriate witness  
22   for that.  I think our concerns are that the more he tries  
23   somehow to suggest a connection between these defendants  
24   and particular movements or whatever, that's where --

25           MR. SOFER:  And again, I understand The Court's

1 concerns about that, although I would just ask The Court as  
2 we go along if we ever go along again, I hope we will this  
3 morning, I just ask The Court to put yourself in the place  
4 of the jurors.

5 THE COURT: That's what I'm signaling to you,  
6 subject to what they have to say that I'm inclined to let  
7 that information be communicated in that fashion.

8 MR. SOFER: Understood, Your Honor.

9 THE COURT: And I can understand that's a  
10 disagreement and it's up to the defense to come back when  
11 the case is with them, you know, Zawahiri was a Sunday  
12 school teacher, whatever. Okay.

13 MR. SOFER: Exactly Judge.

14 MR. HARTMAN: Judge, I can speak for the El-Hindi  
15 team at least. I can't speak for anybody else. We didn't  
16 expect that the government would say, okay, you're right.  
17 We expected a little back and forth on a lot of these  
18 things and are certainly willing to continue the process to  
19 talk about what things mean and what they don't. I mean,  
20 we've -- we believe that some of the things that we  
21 suggested we have some authority for, and -- and we would  
22 undertake some back and forth on. So it isn't our  
23 expectation that this --

24 THE COURT: That's fine. I think some of this we  
25 better get done pretty soon only because they're hearing

1 these terms, the fact that we may have well have done this  
2 before we started hearing some of the terms, that's all.  
3 So I had, in my mind's eye sometime this week saying, by  
4 the way, ladies and gentlemen, you've heard different terms  
5 and you'll hear some more and the parties agree, whatever  
6 you want. I'm going to let the government -- if you can't  
7 agree, I'm going to say, okay, fine, when your turn comes  
8 you can bring somebody in. That's all.

9 MR. HARTMAN: We'll endeavor to try to work that  
10 out.

11 MR. SOFER: I wonder whether The Court and  
12 counsel to the extent we can agree -- I don't think we're  
13 going to agree on everything, but to the extent we can  
14 agree, consider giving the jurors in their books --

15 THE COURT: That's what I anticipate. And if  
16 they have your version, I'll make very clear, ladies and  
17 gentlemen, this is what the government says this is.

18 MR. SOFER: We can do this with the stipulated,  
19 certainly with the stipulated terms.

20 THE COURT: Sure.

21 MR. SOFER: That should not be --

22 THE COURT: I had -- that's -- in my mind's eye  
23 in thinking about this, I thought we should just let them  
24 put them in their books just like a glossary, their own set  
25 of terms.



1 MR. SOFER: Exactly.

2 THE COURT: Okay. Are there generic categories  
3 that I haven't --

4 MR. SOFER: No, we've talked about all of them.  
5 The only thing that The Court is -- has reservations about  
6 that we haven't really touched upon continues to be these  
7 web sites, and I'm not going to beat this dead horse  
8 anymore, but I will, again, ask you to listen to -- as we  
9 go through the case, I think it will become more apparent  
10 why it is that the issue of intent and the issue of exactly  
11 what a particular website stands for, what it is, whether  
12 it was CNN versus something that was run by, visited by  
13 and --

14 THE COURT: Well, you know, there was these all  
15 colossal, whatever it was, I can't remember. I get  
16 something called -- after a batting series, an update on --  
17 and that would be good evidence and pay attention to the  
18 Red Socks. It does seem to me the same thing that with  
19 regard to at least that where somebody is signed up for a  
20 particular service that I'm not ruling that I can see, and  
21 there was at least one of those. The other, remind me  
22 again, a couple others --

23 MR. SOFER: Again, I will propose that we be  
24 able -- this is something I think that The Court should  
25 rule on as you hear the testimony. Because I think -- I

1 think it's glaringly obvious what it is. There's about  
2 five or six all together web sites where the defendants  
3 either -- they either accessed them in order to find the  
4 kind of video materials, some of which we've already played  
5 for the jury, more is to come on that, there were these  
6 Yahoo groups like Your Honor has just said. For instance,  
7 I think Mr. El-Hindi subscribed to Islamic Army in Iraq  
8 Yahoo group. I'm sure I butchered that in some way, shape  
9 or form, but that's part of the title of the Islamic Army  
10 in Iraq.

11 THE COURT: See, with -- that seems to me -- I'm,  
12 at most, approaching getting on the fence about this. To  
13 some extent, something like that, it seems to me you'll  
14 have evidence, I gather, that that was the name of the web  
15 sites and that it was visited. I mean --

16 MR. SOFER: I don't --

17 THE COURT: I'll listen to the evidence. I'm  
18 not -- despite my ruling, my mind is not closed. I'm not  
19 saying, Mr. Sofer, you mention that one more time and  
20 you're going to spend some time next door. I'm not saying  
21 that.

22 MR. SOFER: That's what I'm hoping to avoid, Your  
23 Honor.

24 THE COURT: Something like that. Again, it seems  
25 to me it may well be appropriate to have someone, probably

1 Mr. Kohlmann come in and say Eckhlaas, when it's not  
2 apparent, is somebody who's paying attention what it is,  
3 then I think you're right, you need somebody to translate  
4 that, you know, quote, so that people understand that this  
5 is -- you know, this is not the Drudge report or whatever,  
6 it isn't something other than that.

7 MR. SOFER: And then again, I would prefer to let  
8 the evidence speak for itself here, Judge, in making this  
9 argument. I've made it enough times. I think like a lot  
10 of things it's only clear when you actually see tapes and  
11 hear it. And here I believe -- I think this will only get  
12 clearer to The Court as we proceed.

13 MR. HARTMAN: Judge, in response I would say,  
14 number one, if it's an issue of what web sites people went  
15 to, that's for a forensic computer examiner. The  
16 evidence -- you've heard the tapes of the defendants  
17 talking about what they see on the website and frankly,  
18 what their understanding is is much more important than  
19 what Evan Kohlmann or anybody else said.

20 THE COURT: It does make a defense when somebody  
21 signs up to get e-mail updates or whatever, I understand  
22 what happened with at least that -- that one particular  
23 website.

24 MR. HARTMAN: And I think there will be exhibits  
25 from the government about this IAI Iraq groups and Yahoo

1 groups. I would like fair warning, I believe The Court's  
2 decision was based primarily on relevance and there's a  
3 whole host of other issues.

4 THE COURT: I'm not going to say call  
5 Mr. Kohlmann. I'm going to say we're going to talk about  
6 this. But I do understand some -- the problem that they  
7 face, I mean, it's -- it may be sliced pretty thin, and  
8 I -- I remain concerned about the general relevance of --  
9 of Rule 403 issue. I haven't changed my mind. I'm  
10 thinking about it. That's all. I've got some good news  
11 and bad news. Okay.

12 MR. SOFER: Lastly, Judge --

13 THE COURT: Go ahead.

14 MR. SOFER: Sorry. There is an issue of  
15 transcripts, and I just want to say for the record that the  
16 government continues every day to pour through our  
17 transcripts to find any transcription errors or ability  
18 questions, and we've been sending any changes we get to the  
19 defense as soon as we either see, found or made them. I  
20 think that will continue. And I apologize to counsel that  
21 that's true, but I guaranty if you listen to these tapes  
22 100 times, each time you listen to them you will find  
23 something else that needs to be addressed. So we're  
24 continuing to do that. I just want to reiterate our  
25 concern that although we're starting to get some

1 transcripts from the defense, particularly Mr. El-Hindi,  
2 it's -- unlike the government which was forced to designate  
3 those transcripts and even those portions of transcripts  
4 which it was going to use in its case, that hasn't happened  
5 yet. If we continue on the pace we are this morning then  
6 it won't matter too much, but the bottom line is I just  
7 want you to know, Your Honor --

8 THE COURT: I think that it's fair that you have  
9 notice or at least two weeks in advance roughly of this  
10 segment so you can designate --

11 MR. SOFER: I think the government designated no  
12 less than five or six months in advance those which it was  
13 going to use. Despite what people may think or read in the  
14 newspaper, we do not have unlimited resources, particularly  
15 when it comes to something like this. I actually think the  
16 defense probably has more resources than we do in this  
17 regard, maybe a couple others in this case. But the bottom  
18 line is two weeks, Judge. Depends on the volume, of  
19 course, of transcripts if two week is more than enough. If  
20 they're going to use 30 transcripts, then we're in a great  
21 deal of trouble whether they're -- you know obviously we've  
22 done the --

23 THE COURT: Are you presently in a position to  
24 give some indication or not in terms of -- principally the  
25 volume of stuff. It's all worked -- to some extent any

1 defense in any criminal case is a constant work in progress  
2 because you are formulating what you're likely to be doing,  
3 and you don't really know until the time comes to start  
4 doing it to some extent. But to a certain extent that's  
5 not so. But nonetheless, but my general question to you is  
6 you guys have a sense of how much we're talking about, 3,  
7 30 or 300?

8 MR. HARTMAN: We have some sense on some of it,  
9 and to borrow a phrase from the government, we gave them a  
10 road map in opening statement of exactly what we intend to  
11 play that we believe is defense oriented. The rest of it  
12 is going to depend on what the government's case is. We're  
13 doing our best to try to give them the transcripts that we  
14 have. Mr. Getz and I traded e-mails yesterday and he said,  
15 look, even if you have to overestimate what you're going to  
16 use, we're trying to make those decisions as we go. And  
17 just like the government is giving us different  
18 transcripts, you know we've got other --

19 THE COURT: Let me only say I'm going to make  
20 sure that whatever you give them in that regard, they have  
21 ample time to be prepared to proceed. I'm not going to be  
22 happy if that means taking a two-week hiatus in the trial  
23 because of delay. Though I do understand to some extent  
24 it's tactical. You laid the cards out, Mr. Masloun as he's  
25 entitled to has not, and that's fine. And to some extent

1 there's probably cards that you haven't turned over and  
2 hold them and that's fine too. I understand all of that.  
3 But certainly to the extent that you presently know,  
4 reasonably anticipate, yes, these are things that we  
5 presently expect. We will update. Even if they are wildly  
6 out of chronological order, that's fine. They don't really  
7 care. That's all.

8 MR. HARTMAN: That's fine, Judge.

9 THE COURT: If you can't --

10 MR. HARTMAN: And if we can, we will. And to  
11 the -- we don't intend to hide the ball. It's not the kind  
12 of case that --

13 THE COURT: I understand. I also understand that  
14 there are, to some extent, tactical considerations that  
15 would cause you to want not to be entirely forthcoming, not  
16 to lay all your cards out.

17 MR. HARTMAN: At times.

18 THE COURT: A couple of old cards that you want  
19 to keep hidden until the pot's full and, you know --

20 MR. HARTMAN: And much like the government's,  
21 Mr. Sofer's right about six months ago they told us these  
22 are 33 transcripts we're going go be using, well that  
23 changed to 53 and 57 and we understand that.

24 THE COURT: Mr --

25 MR. BRYAN: Your Honor, just from the Amawi team

1 perspective, what I would submit is that we aren't on equal  
2 footing. I don't think any of the defense are on equal  
3 footing with the government because the government's own --  
4 that the government has literally been working with since  
5 the beginning of their investigation -- not the beginning  
6 of the indictment but since the beginning of the  
7 investigation. Quite frankly, I was a little bit shocked  
8 that the government didn't know their evidence a little bit  
9 better at the time.

10 THE COURT: No, what they're talking about is  
11 where there's disagreements with translations. I think,  
12 Mr. Sofer, that's all you're talking about.

13 MR. SOFER: Yeah, we -- we're --

14 THE COURT: Yes or no?

15 MR. SOFER: Yes, Judge.

16 MR. BRYAN: Okay.

17 THE COURT: That's all we're talking about. And  
18 I think it's fair for them. If you know there are  
19 particular segments, particularly the evidence that the  
20 government has put in and you know now that you are going  
21 to say you're going to bring in a translator that says, no,  
22 that term means this, it's entirely fair for you to go  
23 ahead and notify the government of that today. That's all.

24 MR. BRYAN: That narrows it down, Your Honor.  
25 What I was concerned is that somehow we have to provide to



1 the government everything that we intend to play. There  
2 are things that the government -- government chose not to  
3 play that obviously we may for defense purposes.

4 THE COURT: To the extent that they know that, to  
5 the extent that you made that clear in opening statement,  
6 and also, quite candidly, absent a tactical reason to turn  
7 the card over, to the extent that you know and the  
8 government knows that you are likely to be presenting some  
9 evidence, give them your translated version -- that's  
10 all -- and your transcribed version.

11 MR. BRYAN: There are some tapes that weren't  
12 transcribed by the government that we believe are relevant  
13 that aren't even in Arabic. They're -- they're tapes of  
14 all of Mr. Griffin when he speaks.

15 THE COURT: That's fine. That's a lot easier, I  
16 assume. I mean, even so, I'm going to want them to have  
17 those at least a week or couple weeks in advance of your  
18 playing them. I really -- I don't want to get into a  
19 situation where they stand up and say, Judge, we just got  
20 43 transcripts totaling 800 pages and we've only seen 40  
21 taken of this stuff and we disagree with a lot of it and we  
22 need a couple of weeks to go through it. That's what I'm  
23 saying.

24 MR. BRYAN: We're still receiving that  
25 information too, Your Honor. It's not like we have it in

1 storage somewhere.

2 THE COURT: I understand that. That's what I  
3 tried to say at the outset of this colloquy. I know that a  
4 defense plan, as conceived on the first day of trial much  
5 more often than not in its execution is vastly different  
6 because you don't know what the government's going to put  
7 in.

8 MR. IVEY: Your Honor, I just want to ask a  
9 question that would aide in this process. When the  
10 government is concluded with their direct examination of  
11 Mr. Griffin, what is The Court's thought on what is a  
12 reasonable gap in between the finish so we kind of know?

13 THE COURT: If we conclude Mr. Griffin at 3:00 on  
14 Friday, a reasonable gap would be until Tuesday at 8:30 in  
15 the morning. If we conclude Mr. Griffin at 3:30 on  
16 Tuesday, it might be a day or two, okay.

17 MR. IVEY: Okay.

18 THE COURT: You'll have time. I'm not going to  
19 say Mr. Ivey, your witness. I'll say -- I'll hear you guys  
20 out and say, Judge, 3:30 Tuesday afternoon, can we at least  
21 have to Thursday morning or Thursday noon to prepare, or  
22 less time if you want. Okay. Other things that we --

23 MR. SOFER: I think that's it from the  
24 government's standpoint, Judge.

25 MR. HARTMAN: We'll try to come up with something

1 later, Judge.

2 THE COURT: Okey dokey. Okay. I'm going to step  
3 down, and, Angela, you can do likewise. And Amy, can you  
4 try to get an update and let people know?

5 MR. WHITMER-RICH: I'm sorry, briefly one issue.

6 THE COURT: Sure, go ahead.

7 MR. WHITMER-RICH: We had talked about trying to  
8 get phone records from -- from our client's land lines and  
9 that sort of thing with the government a couple weeks ago  
10 and suggested --

11 THE COURT: I think I said subpoena the company.

12 MR. WHITMER-RICH: Indeed and we have pursued  
13 subpoenas. The responses to date is that it will be a very  
14 lengthy process to get those. It requires sending out  
15 notice to other customers and waivers from them, I'm not  
16 sure exactly what's going on. And the cost is  
17 approximately \$10,000. And we're simply --

18 THE COURT: For just his phone records? You  
19 may -- if I contact Verizon and say please print out --

20 MR. HERDMAN: Your Honor, we ran into the same  
21 problem as we were going through this. In order to get the  
22 local call detail, there is a surcharge of -- of I believe  
23 it's 25, it may even be more than that per day and that's  
24 why -- that's why.

25 THE COURT: \$25.

1 MR. HERDMAN: \$25 per day.

2 THE COURT: In other words, in effect, pen  
3 register information, the phone company equivalent if I  
4 call my wife at her office here in Toledo, they actually  
5 have that record.

6 MR. HERDMAN: They do have it. They have -- what  
7 you can get very easily are the long distance calls and  
8 billing information. The local call detail is much more  
9 difficult to get and that's why we've provided counsel with  
10 what we have in terms of local call detail. We only got it  
11 for the days we were interested in, particular dates that  
12 were relevant to our case. So counsel should have that for  
13 those particular dates.

14 THE COURT: About how many days total?

15 MR. HERDMAN: I think it was maybe six or seven  
16 and they were all April and March of '05. So what I can --  
17 the only thing I can recommend is counsel doing the same  
18 thing we did is pick particular days that would be of  
19 interest.

20 THE COURT: I thought I knew a lot about this  
21 stuff. I didn't know they could retrieve that.

22 MR. HERDMAN: My understanding is they actually  
23 have to go into a tape or reel or something and pull the  
24 information out of it, that's why it costs \$25 per day.

25 MR. WHITMER-RICH: We simply renew our request

1 to -- that the government provide us the records that they  
2 had.

3 MR. HERDMAN: We have, Your Honor. They're in  
4 our exhibit books and on the list.

5 THE COURT: And with -- let me know -- let me  
6 know promptly what more you need, what the company or  
7 companies are telling you in terms of time. I'm more  
8 concerned about that than cost. The cost is the cost. But  
9 in terms of time, if there's anything I can do in terms of  
10 moving your request, and there probably aren't that many  
11 requests. It may simply be a matter of getting the work  
12 done. Did they tell you how long?

13 MR. WHITMER-RICH: They said it would not be done  
14 before April 21st.

15 THE COURT: That's a couple weeks. Why don't you  
16 try and -- I mean, I would assume that the more that you  
17 can narrow that down, the more quickly you can get it. I  
18 thought you were talking a couple months or whatever.  
19 Okay.

20 MR. SOFER: Judge, what do you want us to do,  
21 hold our --

22 THE COURT: I want Amy -- Mary Lee.

23 (A brief discussion was had off the record.)

24 THE COURT: Please find out about the information  
25 on the back-up system. This is twice in a week. I don't

1 care what it costs. Let's at least find out.

2 MR. HERDMAN: I'll double check the -- my  
3 understanding is we've been in touch with Mr. Bianco and  
4 hopefully we can get that. We do have an update. Hot off  
5 the press I guess, there was a verbal quote -- do you want  
6 me to get into the figures here right now, Your Honor?

7 THE COURT: I suppose that's fine.

8 MR. HERDMAN: Let's --

9 THE COURT: All we're talking about is renting  
10 the screens but that's neither here nor there.

11 MR. HERDMAN: There's a sound system, I don't  
12 know that we need to concern ourselves with that right now,  
13 but in terms of three, 42-inch monitors for the jury, this  
14 includes seven, 19-inches monitors for defense, prosecutors  
15 and judge, I don't know that we need that but this would be  
16 the full back-up system, that would be \$4,700 a month for  
17 the rental, one day to set up and test, and I think  
18 we're -- I think we might need to just tweak this request a  
19 little bit to find out about the 42-inch monitors.

20 THE COURT: That's what I'm talking about is just  
21 the setup that we had during opening statement.

22 MR. HERDMAN: And I can't imagine why that would  
23 take a day to set up, but, again, I don't know. I'll make  
24 sure we're on the same page.

25 MR. SOFER: Judge, one of the marshals said to me

1 on the break, I think correctly so, that no one's really  
2 using this big monitor back here. Now, if you --

3 (A brief discussion was had off the record.)

4 (Jury brought back in at 10:37 a.m.)

5 THE COURT: Ladies and gentlemen, I want to  
6 report to you I just sent the following message, Houston,  
7 all systems are go. Let's give it a try.

8 MR. SOFER: I'll start the countdown, Judge, and  
9 we can all hold our breath.

10 One thing I'll say, ladies and gentlemen, that  
11 there's about a two or three second delay from the time you  
12 turn it on and actually start hearing something. So it may  
13 seem like to doesn't work. So if you just give it a little  
14 time, it usually just kicks in. That is, the audio.

15 THE COURT: Okay.

16 MR. SOFER: Okay. Mr. Griffin, try this again.

17 BY MR. SOFER:

18 Q. I want to direct your attention back to  
19 October 14th, 2004. There was a conversation that we  
20 listened to, I believe, on Friday that took place, I  
21 believe your testimony was at Mohammed Amawi's apartment;  
22 is that correct?

23 A. Yes.

24 Q. And we're going to play 10A-2.

25 (Audio playing.)

1 Q. Okay. And I want to direct your attention now to  
2 where we stopped I think on Friday, which is December 13th,  
3 2004. Again, I believe your testimony was you believe that  
4 this conversation took place in Mohammed Amawi's apartment?

5 A. Yes.

6 Q. And do you recall where we stopped on Friday just  
7 to put us back where we were?

8 A. It was -- the cut was -- we were reviewing the  
9 Atocha, Spain train bombings, and Mr. Amawi had laughed and  
10 made the statement they love life.

11 Q. And did that conversation continue?

12 A. Yes.

13 Q. We're going to play 1D13, Exhibit Number 4-20.  
14 And it's clip 3-A, please.

15 (Audio playing.)

16 Q. Mr. Griffin, did the conversation continue on  
17 December 13th of 2004 at Mohammed Amawi's apartment?

18 A. Yes, it did.

19 Q. And we're going to play 1D13, Exhibit 4-20 clip  
20 4A.

21 (Audio playing.)

22 Q. Okay. Mr. Griffin, I want to show you what's  
23 been marked Government's Exhibit Number 30 for  
24 identification. Can you tell the members of the jury if  
25 you recognize that?



1 A. It is a disc.

2 Q. And do you know what's depicted on Government's  
3 Exhibit Number 30 for identification?

4 A. This is the video we were watching during this  
5 past clip where he was explaining to me where a sniper he  
6 had hit, he held up two fingers and said I swear I  
7 killed two Americans.

8 Q. Do you remember, among other things, what  
9 Mohammed Amawi said about that guy when he first introduced  
10 you to that clip?

11 A. That he loves this guy.

12 Q. Do you have an independent recollection of  
13 watching that on or about December 13th, 2004 with  
14 Mr. Amawi?

15 A. Yes, I do.

16 MR. SOFER: At this time the government offers  
17 Government Exhibit Number 30 into evidence.

18 THE COURT: Okay. It will be admitted.

19 BY MR. SOFER:

20 Q. We're going to play Government Exhibit Number 30,  
21 and, again, I warn you, ladies and gentlemen, when it first  
22 starts, it may be a little louder than the other audio that  
23 you've heard.

24 (Video playing.)

25 Q. Okay. Mr. Griffin, did there come a time three

1 days later when you met with Marwan El-Hindi?

2 A. Yes.

3 Q. And do you recall where that was?

4 A. I believe at his apartment.

5 Q. Do you know where that was located?

6 A. I believe on Main Street, Toledo, Ohio.

7 Q. Okay. And we're going to play 1D2, Exhibit 4-72,  
8 clip 2-A, please.

9 THE COURT: That would have been December 16th?

10 MR. SOFER: Yes, Judge.

11 THE COURT: What was that number?

12 MR. SOFER: 1D2, Exhibit 4-72, clip 2-A.

13 (Audio playing.)

14 Q. Mr. Griffin, did that conversation continue on  
15 the 16th of December, 2004?

16 A. Yes.

17 Q. And we're going to play clip 4A from 1D2 Exhibit  
18 4-72.

19 (Audio playing.)

20 Q. I want to direct your attention, Mr. Griffin, to  
21 the day after Christmas in 2004. Do you recall whether or  
22 not you had a conversation with someone related to the case  
23 on that day?

24 A. Yes, Khaleel Ahmed.

25 Q. And can you give us a basic description of what

1 that conversation was like?

2 A. Basically I was in -- I believe in the Chicago  
3 area, and I gave him a call to see if he was interested in  
4 still getting together for Jihad training.

5 Q. And I want to direct your attention to three days  
6 later on December 29th of 2004. Did you have a  
7 conversation on that day with Marwan El-Hindi?

8 A. Yes, I did.

9 Q. And we're going to play 1D4, Exhibit 4-74, clip  
10 4A.

11 (Audio playing.)

12 Q. Mr. Griffin, did you ever actually meet with  
13 Zubair and Khaleel again?

14 A. I did not.

15 Q. And did Zubair and Khaleel ever come to Ohio to  
16 train?

17 A. They did not.

18 MR. HARTMAN: Objection, he said he never met  
19 with him. He wouldn't know.

20 THE COURT: Okay. That's fine.

21 MR. SOFER: Train with you is what I meant.

22 THE COURT: He said he never met them again, so  
23 I'll sustain the objection.

24 MR. SOFER: Very well.

25 BY MR. SOFER:

1 Q. I want to direct your attention to January 10th  
2 of 2005 into the early morning hours of January 11th, 2005.  
3 Did there come a time when you spent the better part of an  
4 evening with Mohammed Amawi?

5 A. Yes.

6 Q. And among other things, what did you do on that  
7 day with him?

8 A. We viewed numerous videos. We had lengthy  
9 discussions, and most of the time was spent in his room on  
10 the computer.

11 Q. And we're going to play 1D14, Exhibit 4-21. And  
12 we're going to start with clip 1A, please.

13 (Audio playing.)

14 Q. Okay. Mr. Griffin, did the conversation on  
15 January 10th continue?

16 A. Yes, it did.

17 Q. And we're going to play --

18 MR. SOFER: Judge, we have a lot of clips here  
19 that are all from the same numbers, so I'm just going to  
20 refer to them by clips if that's okay.

21 THE COURT: That's fine.

22 Q. We're going to play clip 2-A.

23 (Audio playing.)

24 Q. Okay. Did the conversation continue?

25 A. Yes, it did.

1 Q. Let's play clip 3-A please.

2 (Audio playing.)

3 Q. Mr. Griffin, did the conversation on  
4 January 10th, 2005 continue?

5 A. Yes, it did.

6 Q. I'm going to play clip 4A.

7 (Audio playing.)

8 Q. Okay. Did the conversation continue?

9 A. Yes, it did.

10 Q. I'm going to play 5A, please.

11 (Audio playing.)

12 Q. Okay. Mr. Griffin, did the conversation  
13 continue?

14 A. Yes, it did.

15 Q. Let's play 6A.

16 (Audio playing.)

17 Q. Okay. Did the conversation continue on  
18 January 10th?

19 A. Yes, it did.

20 Q. We're going to play clip 7A, please.

21 (Audio playing.)

22 Q. Okay. Mr. Griffin, did the conversation on  
23 January 10th, 2005 at Mohammed Amawi's apartment continue?

24 A. Yes, it did.

25 THE COURT: I'm just curious, about how long is

1 this sequence?

2 MR. SOFER: It's going to be at least another  
3 hour, Your Honor, with all the videos.

4 THE COURT: But in terms of the audio?

5 MR. SOFER: Well, the audio is interspersed with  
6 the video, but I would say -- I can't tell you exactly.  
7 Some are between a half hour and 45 minutes, Judge.

8 THE COURT: Why don't we complete the audio and  
9 then break for lunch.

10 MR. SOFER: Actually, I think, Your Honor,  
11 there's a large video that will be played. It takes almost  
12 25 minutes to play the video. So if we can break before  
13 that video, that probably is the best time, otherwise it  
14 will interrupt --

15 THE COURT: And when would that be?

16 MR. SOFER: I'm hoping in another 15 minutes or  
17 so, maybe 20. I don't have the time on this.

18 THE COURT: I've got to let my office know  
19 because I have things to tend to, that's all.

20 MR. SOFER: If you give me two seconds, I can  
21 take a look at the times that we have and I'll let you  
22 know.

23 THE COURT: Ladies and gentlemen, if you can  
24 remember to keep the head sets on during the English  
25 portion of the audio recordings, although I did have mine

1 off, and I think it is marginally better if we all have the  
2 head sets on.

3 MR. SOFER: We'll try to pick a good place to  
4 stop in about 15 minutes or so.

5 THE COURT: Whatever. I just want to know the  
6 time table.

7 MR. SOFER: Understood.

8 MR. HARTMAN: Which clip now?

9 MR. SOFER: The next one we're going to play is  
10 9A.

11 MR. HARTMAN: Thanks.

12 (Audio playing.)

13 Q. Okay. Mr. Griffin, I want to show you what's  
14 been marked Government's Exhibit Number 32 for  
15 identification. Can you tell us if you recognize that?

16 A. It is a CD.

17 Q. Do you know what's depicted on Government's  
18 Exhibit Number 32 for identification?

19 A. This would be the video that we were viewing,  
20 commune number six, I believe.

21 Q. Was that your independent recollection of  
22 watching all or part of that video with Mohammed Amawi on  
23 January 10th, 2005?

24 A. Yes.

25 MR. SOFER: At this time the government offers

1 Exhibit Number 32 into evidence.

2 THE COURT: It will be admitted.

3 MR. HARTMAN: 32?

4 MR. SOFER: Yeah, 32. Again, I don't know how  
5 loud it will be, ladies and gentlemen.

6 Your Honor, now I think would be a good time to  
7 stop.

8 THE COURT: Okay. We'll resume at 1:00. Don't  
9 talk about the case. Keep an open mind and we'll see you  
10 then.

11 (A brief recess was taken for lunch.)

12 THE COURT: You may be seated. Mr. Griffin, you  
13 remain under oath.

14 BY MR. SOFER:

15 Q. Mr. Griffin, did the conversation on  
16 January 10th, 2005 with Mr. Mohammed Amawi continue?

17 A. Yes, it did.

18 Q. And when we're all ready, we're going to play  
19 clip 10A.

20 (Audio playing.)

21 Q. Okay. And did the conversation continue?

22 A. Yes, it did.

23 Q. Let's play 11 then.

24 (Audio playing.)

25 Q. And did the conversation continue?



1 A. Yes, it did.

2 Q. Let's play 12 then.

3 (Audio playing.)

4 Q. Okay. And did the conversation continue?

5 A. Yes, it did.

6 Q. Let's play 13 then.

7 (Audio playing.)

8 Q. You later learned who that Brother Wassim he was  
9 referring to?

10 A. Yes, Wassim Masloun.

11 Q. Continue, please.

12 (Audio playing.)

13 Q. Okay. Did the conversation continue?

14 A. Yes, it did.

15 Q. Play 14 then.

16 (Audio playing.)

17 Q. Okay. And did the conversation continue beyond  
18 that?

19 A. Yes, it did.

20 Q. And let's play 15.

21 (Audio playing.)

22 Q. What Brother Marwan were you referring to?

23 A. Marwan El-Hindi.

24 Q. Please continue.

25 (Audio playing.)

1 Q. What brother were you referring to who Marwan  
2 El-Hindi introduced you to that wanted training?

3 MR. HARTMAN: Objection.

4 THE COURT: Basis?

5 MR. HARTMAN: I think we need to approach.

6 THE COURT: Why don't you rephrase the question.

7 BY MR. SOFER:

8 Q. You indicated that there were some good brothers  
9 that Marwan had introduced you to; is that right?

10 A. Yes.

11 Q. And who were you referring to?

12 A. Khaleel and Zubair Ahmed.

13 Q. Please continue.

14 (Audio playing.)

15 Q. Okay. Did the conversation continue beyond that?

16 A. Yes, it did.

17 Q. And let's play 16A.

18 (Audio playing.)

19 Q. Okay. Mr. Griffin, I'm going to show you what's  
20 been marked Government Number 36 for identification. Tell  
21 the members of the jury if you recognize that.

22 A. It is a CD.

23 Q. And do you know what's depicted on Government's  
24 Exhibit Number 36?

25 A. This is the bomb vest video, the video we were

1 viewing on this last clip.

2 Q. And do you have an independent recollection of  
3 watching some or all of that clip on January 10th, 2005  
4 with Mohammed Amawi?

5 A. Yes, I do.

6 MR. SOFER: At this time the government offers 36  
7 into evidence.

8 THE COURT: It will be admitted.

9 MR. SOFER: We're going to play this, Your Honor.  
10 It's quite lengthy. What the government proposes after we  
11 play this, to actually give the jurors a translation, and  
12 one of us will read the translation, otherwise you can't  
13 follow because it's in Arabic.

14 THE COURT: Okay. Again, if -- it's up to you,  
15 Mr. Sofer, if you would prefer to read a segment of the  
16 translation either before or after, whatever.

17 MR. SOFER: I think it will sort of speak for  
18 itself in some ways, but we'll read the translation  
19 afterwards. And I don't know how loud it is, so be  
20 careful.

21 THE COURT: As I indicated, if you can hear  
22 without --

23 MR. SOFER: I think with many of the videos,  
24 we'll have to try but you may be able to hear the video  
25 without the actual ear phones.

1 (Video playing.)

2 MR. SOFER: Okay. Judge, with The Court's  
3 permission I'd like to hand out translation for the jury.

4 MR. BOSS: Judge, may we approach for a moment?

5 THE COURT: Sure.

6 (A side bar conference was had on the  
7 record.)

8 THE COURT: Can you hear us okay?

9 MR. BOSS: Steve wanted to stretch his back.  
10 Beyond that, Judge, first we heard -- at first we heard  
11 Mr. Amawi give a translation as the tape was being watched  
12 by he and Mr. Griffin. Then we've just watched the  
13 26-minute videotape which frankly, in my opinion, speaks  
14 for itself. To review again now that same information on  
15 these transcripts I think is just laying it on a little bit  
16 too thick. I don't believe that we need to do that.

17 MR. SOFER: What counsel believes we need to do  
18 and the government should be entitled to put its brief to  
19 the jury. The bottom line is, among other things, I've  
20 heard statements from defense counsel that Mr. Amawi would  
21 tell Mr. Griffin things that were not actually happening.  
22 Among other things, that is, an agreed upon translation of  
23 what it is that's on that tape. There are portions of  
24 it -- Mr. Amawi did translate some of it, he didn't  
25 translate all of it. I think the government's entitled to

1 show the jury that, in fact, what's being demonstrated,  
2 what's being showed is what is.

3 It's actually part of three separate counts.

4 MR. BRYAN: Your Honor, as it relates to what the  
5 evidence is in this case, it's what Mr. Amawi said to  
6 Mr. Griffin. There's no evidence, and I don't believe the  
7 government's going to introduce any evidence that Mr. Amawi  
8 did a verbatim translation of these materials for  
9 Mr. Griffin. The only translation that Mr. Amawi made was  
10 the one that we just heard, where it was just basically  
11 going along with the video and saying -- summarizing what  
12 the video, saying -- until the government's going to  
13 present evidence that Mr. Amawi did a verbatim translation  
14 of this video and gave it to Mr. Griffin, I don't believe  
15 that this is relevant.

16 MR. SOFER: Again, Judge, the jury, I think, is  
17 entitled to -- it should know what is actually on this  
18 particular recording. That's all that this does. It  
19 provides an English translation to what it is that's being  
20 shown.

21 THE COURT: I'm going to permit it. The reason  
22 I'm going to permit it is that I understand the nature of  
23 the charge. Correct me if I'm wrong, it's a transmission.

24 As I understand the charge, the government has to  
25 prove that what, in fact, was transmitted were, in fact,

1 instructions that it followed that would enable somebody to  
2 make a bomb. If I'm not correct about that, tell me. It's  
3 not like in the case of attempted distribution of marijuana  
4 and you give somebody oregano or whatever and you thought  
5 it was marijuana. Here, as I understand the defense, if  
6 somebody followed these directions they could, in fact,  
7 make a bomb.

8 Now, the fact that Griffin couldn't read Arabic  
9 isn't the issue. The fact is somebody who had this video,  
10 and assuming that he could get somebody to translate to  
11 Arabic sat down and connected the dots and could make a  
12 bomb. So I think it's permissible and the objection is  
13 overruled.

14 MR. SOFER: We have a further count in the  
15 indictment where what was given to Mr. Griffin was an  
16 Arabic document which is never translated in the same way,  
17 it's the same exact content.

18 MR. HARTMAN: Judge.

19 MR. BRYAN: Your Honor, Mr. Amawi needs a  
20 bathroom break as well.

21 THE COURT: Ladies and gentlemen, we'll take a  
22 break for about 10 minutes, 15 minutes. Nobody heard that  
23 either.

24 MR. HARTMAN: If that's -- if that's the reason,  
25 The Court would be inclined to let the translation in.

1 Shouldn't we have a certified translation?

2 THE COURT: Well, no. There's no objection, and  
3 if you folks haven't objected and said this isn't it, then  
4 fine, it's coming in. Take a break.

5 (Speaking with a juror independently.)

6 THE COURT: If you are not up to it, we can  
7 adjourn -- if we can continue for a while.

8 THE JUROR: We can try to continue for a while.  
9 If I do have to use the restroom again, if I can be  
10 excused.

11 THE COURT: Is that door open? Maybe you can  
12 just sit right here. If you don't feel well, you can get  
13 all your -- are you willing to do that?

14 THE JUROR: Yes.

15 THE COURT: And if we get to the point where it's  
16 too much, just say so. We can quit right now for the day.

17 THE JUROR: I can try to go on a little bit  
18 longer.

19 MR. SOFER: Judge, can we just approach for a  
20 second, please?

21 THE COURT: Let me ask you this, and will you be  
22 able to concentrate --

23 THE JUROR: Yes.

24 THE COURT: -- and pay attention? You feel  
25 yourself in either distress or discomfort or basically not

1 able to concentrate, just say Judge --

2 THE JUROR: Okay.

3 THE COURT: -- can we go home now?

4 THE JUROR: Okay.

5 (Jury brought in.)

6 THE COURT: Ladies and gentlemen, as you may  
7 know, one of your colleagues is not feeling well, and I  
8 think what we'll do as willing as you are to give it a --  
9 give it a try, I think we're going to read the transcript  
10 and adjourn.

11 THE JUROR: Thank you.

12 THE COURT: Thank you. I think the record is  
13 fair to show that while the mean nasty old Judge was  
14 determined to push on his unanimous uprising on the part of  
15 counsel said, come on, Judge, now -- once in a while  
16 federal Judges get overruled. Go ahead. I believe  
17 Mr. Sofer and Mr. Getz will read the transcript.

18 MR. SOFER: Yes, Judge, and I'll get out of the  
19 way.

20 THE COURT: Ladies and gentlemen, it's my  
21 understanding that what you will be hearing will be a  
22 translation of the Arabic that was displayed, or I guess  
23 observed on the video we just watched. And Mr. Getz, you  
24 may continue.

25 (Tom Getz reading Exhibit Number 36A into



1 the record.)

2 THE COURT: Ladies and gentlemen, I do think that  
3 we will adjourn for the day and hopefully you'll be feeling  
4 better tomorrow. Go home and get your rest. Okay. As  
5 always, don't talk about the case and keep an open mind and  
6 we'll see you tomorrow. And let's hope all systems are go,  
7 please. We're going to try and move the case along. I can  
8 assure you you're not the only people frustrated by the  
9 kinds of problems we had earlier this morning. Trust me.  
10 Thank you very much for your patience and your dedication  
11 to serve.

12 (Jury excused at 3:05 p.m.)

13 THE COURT: We'll see you tomorrow morning.

14 MR. SOFER: Before we leave, don't you think we  
15 ought to complete the record on what we said at side bar?

16 THE COURT: On behalf of Mr. Amawi, Mr. Bryan  
17 made the additional objection to the reading of the  
18 transcript to the jurors on the basis that the record would  
19 not show that the video was actually downloaded and  
20 delivered to Mr. Griffin by Mr. Amawi. And so therefore,  
21 the principal basis on which I allowed the transcript to be  
22 admitted, in other words, without the transcript somebody  
23 who wanted to understand what was going on would not be  
24 able to do so absent the instruction, or at least if it's  
25 necessary for the government's proof as to the defenses

1 wish this exhibit relates for the jurors to know what, in  
2 fact, was being stated, communicated in Arabic. Otherwise,  
3 one would speculate and it might have nothing to do with  
4 anything. Mr. Bryan pointed out, as I said, that there was  
5 no proof that the video was delivered to Mr. Griffin, and  
6 Mr. Sofer has represented that there will be proof of  
7 delivery of what he has represented is a duplicate video.  
8 We don't know whether it's the same video or a duplicate  
9 video containing the same material and same text at some  
10 point by Mr. El-Hindi or via Mr. El-Hindi to Mr. Griffin so  
11 that, in fact, at some point he actually had a duplicate of  
12 the video with the text which made introduction of the  
13 translation of the Arabic text appropriate. Does that --

14 MR. BRYAN: That states it well, Your Honor.

15 MR. SOFER: Just so it's clear, what ultimately  
16 happens is Marwan El-Hindi provides Darren Griffin with the  
17 ability to download this particular video from a particular  
18 site which requires an understanding of all kinds of areas,  
19 different things which, again, I think as we go on, it'll  
20 be clearer to The Court.

21 THE COURT: Okay. See you guys in the morning.  
22  
23  
24  
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

S:/Angela D. Nixon

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Angela D. Nixon, RPR, CRR

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Date

I N D E X

Testimony of Darren Griffin continued